

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel, 415-865-7535,
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DATE: February 20, 2006

SUBJECT: Probate: Private Professional Guardians of the Person
(amend Cal. Rules of Court, rule 7.1010) (Action Required)

Issue Statement

Rule 7.1010 of the California Rules of Court, concerning private professional guardians, was adopted by the Judicial Council effective January 1, 2006 in response to Assembly Bill 1155.¹ This legislation directed the Judicial Council to prescribe by court rule the qualifications and continuing education to be required of private professional guardians.

Rule 7.1010(a)(5) defines a private professional guardian by reference to the statutory definition of that term in Probate Code section 2341(b) for purposes of the local information statement requirements of sections 2340–2344. Assembly Bill 541, which became effective on January 1, 2006, changed that statutory definition.² The rule should be revised to conform to the statutory change.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council effective July 1, 2006, adopt the proposed amendment of rule 7.1010.

Attached at page 4 is amended rule 7.1010.

¹ Stats. 2004, ch. 625, effective January 1, 2005.

² Stats. 2005, ch. 302 (Assembly Bill 541), § 2, amending Probate Code section 2341.

Rationale for Recommendation

When rule 7.1010 was considered by the Judicial Council last November, a private professional guardian was defined in Probate Code section 2341(b) as the guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage.³ This definition was incorporated in the rule at paragraphs 7.1010(a)(5) and (6).

As expressly authorized by Assembly Bill 1155, in adopting rule 7.1010 the Judicial Council exempted guardians of the person only from the requirements of the rule even though they were within the statutory definition of a private professional guardian in section 2341(b).⁴ Rule 7.1010(b), concerning the qualifications of a private professional guardian that must be met as a condition of appointment, applies only to appointments of guardians of the estate or the person and estate. Rule 7.1010(j) states that a private professional guardian of the person only of two or more unrelated minors is exempt from the requirements of the rule.

Assembly Bill 541

Governor Schwarzenegger signed Assembly Bill 541 into law on September 22, 2005, effective January 1, 2006. This legislation, which was supported by the Judicial Council, changed the definition of private professional guardian in Probate Code section 2341(b) by referring to guardians of the estate in the opening sentence, thereby excluding guardians of the person only from the definition for purposes of the local information statement filing requirement.

Amended rule 7.1010(a)(5) would change the definition of private professional guardian under the rule to conform to the changed definition of that term in Probate Code section 2341(b) as amended by Assembly Bill 541. Rule 7.1010(j) would be amended to delete as unnecessary the exemption for guardians of the person

Assembly Bill 541 also amends section 2341(b) to authorize a court to exercise its discretion to require a guardian of the person to comply with the local information-statement requirement of Probate Code sections 2340–2344 if the guardian receives compensation for performing services as guardian. Revised rule 7.1010(j) would authorize a court to exercise discretion to exempt from some or all provisions of the rule a compensated guardian of the person the court has required to comply with the local information statement filing requirements.

³ Rule 7.1010(a)(6) defines an “unrelated minor” to include a minor unrelated to his or her guardian by blood, marriage, or *domestic partnership*, an expansion of the statutory definition impliedly required by the California Domestic Partner Rights and Responsibilities Act of 2003 (Stats. 2003, ch. 421, §§ 2, 4). See Family Code section 297.5(a) and (l).

⁴ See Stats. 2004, ch. 625, § 1c, an uncoded portion of Assembly Bill 1155.

Alternative Actions Considered

No action other than proposing an amended rule 7.1010 was considered. The advisory committee did consider but rejected a draft of the amended rule that would not have given courts the discretion noted in the previous paragraph.

The committee concluded that an appointing court should have the discretion granted by Assembly Bill 541 to require a compensated guardian of the person to file an annual information statement without being forced by that decision also to require the guardian to satisfy all of the qualification and continuing education requirements of the rule. This conclusion was based on the committee's belief that many guardians of the person of a child would not be professional fiduciaries in any real sense of that term even though they might receive some small compensation from the child's extended family or some other source. Forcing these potential guardians to comply with all of the requirements of the rule could discourage or prohibit many otherwise capable and qualified persons from serving.

Comments From Interested Parties

This proposal was circulated for comment to a special list of judicial officers, probate examiners or attorneys, and other court staff interested in probate matters, as well as probate interest sections of the State Bar and local bar associations, in addition to the AOC's standard list of interested court executives, individuals, and organizations.

Attached at pages 5–8 is a comment chart showing the public's comments received and the advisory committee's responses. A total of 12 comments were received; 11 commentators approved of the proposed amendment without additional comments.

One commentator, Ms. Carolyn Reilly, the executive director of a San Diego elder advocacy organization, disagrees with the proposal on the general ground that if a person is a professional or is regarded as a professional, there should be monitoring devices in place. The advisory committee disagrees with this comment because the change in the underlying statute made by Assembly Bill 541 and the proposed change in the rule do not mean that guardians of the person are going from coverage under the rule to exemption from it; such guardians were excluded from coverage under the rule before this proposed amendment. Under the rule as amended, the court would actually have greater authority than it does under the current rule to require a paid guardian of the person of a child to comply with the rule.

Implementation Requirements and Costs

This proposed amendment will incur only the normal costs associated with the amendment of any California Rule of Court.

Attachments

Rule 7.1010 of the California Rules of Court is amended, effective July 1, 2006, to read:

Rule 7.1010. Qualifications and continuing education requirements for private professional guardians

(a) [Definitions] For purposes of this rule:

(1)–(4) * * *

(5) The term “private professional guardian” has the meaning specified in Probate Code section 2341(b), including a guardian of one unrelated minor and a guardian of the person of one or more unrelated minors whom an appointing court has required to comply with article 4 of chapter 4 of part 4 of division 4 of that code (commencing with section 2340).

(6) * * *

(b) [Qualifications for appointment] Except as otherwise provided in this rule, effective January 1, 2006, a court may not appoint a private professional guardian as guardian of ~~the estate or guardian of the person and estate of~~ an unrelated minor unless on the date of the order of appointment, the private professional guardian:

(1)–(4) * * *

(c)–(i) * * *

(j) [~~Exemption of~~ Discretion concerning certain guardians of the person] Notwithstanding any other provision of this rule, ~~a private professional guardian of the person only of two or more unrelated minors is exempt from the requirements of this rule~~ in the exercise of its discretion, a court that requires a guardian of the person to comply with the provisions of article 4 of chapter 4 of part 4 of division 4 of the Probate Code (commencing with section 2340) because the guardian receives compensation may exempt that guardian from some or all of the requirements of this rule.

Private professional guardians of the person (amend rule 7.1010 of the California Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Response of Probate and Mental Health Advisory Committee
1.	Ms. Sandy Almansa Supervising Legal Clerk II Superior Court of California, County of Stanislaus P.O. Box 1098, 1100 - I Street Modesto, California 95353-1098	A	N	Agree with proposed changes.	No response necessary.
2.	Ms. Grace Andres Program Manager Superior Court of California, County of Solano 600 Union Avenue Fairfield, California 94533	A	N	Agree with proposed changes.	No response necessary.
3.	Mr. David Jetton Court Administrator Superior Court of California, County of Los Angeles 600 South Commonwealth Los Angeles, California 90005	A	N	Agree with proposed changes.	No response necessary.
4.	Hon. Kent M. Kellegrew Judge of the Superior Court of California, County of Ventura P.O. Box 6489 Ventura, California 93006-6489	A	N	Agree with proposed changes.	No response necessary.
5.	Ms. Tressa S. Kentner	A	N	Agree with proposed changes. The proposal	No response necessary.

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	Commentator	Position	Comment on behalf of group?	Comment	Response of Probate and Mental Health Advisory Committee
	Executive Officer of the Superior Court of California County of San Bernardino 172 W. 3rd Street, 2nd Floor San Bernardino, California 92415-0302			appears to be justified and adequate and it is suggested that the amendment be supported.	
6.	Ms. Joan McCoy Volunteer, Court Appointed Special Advocate (CASA) of Fresno and Madera Counties 1475 West Shaw Avenue Fresno, California 93711	A	N	Agree with proposed changes.	No response necessary.
7.	Ms. Sharon Ngim, Staff Liaison to the Standing Committee on the Delivery of Legal Services The State Bar of California Office of Legal Services, Access & Fairness Programs 180 Howard Street San Francisco, California 94105-1639	A	Y	The State Bar Standing Committee on the Delivery of Legal Services generally supports this proposal to the extent stricter standards are imposed on professional fiduciaries.	No response necessary.
8.	Ms. Carolyn Reilly, Executive Director Elder Law & Advocacy 3675 Ruffin Road, Suite #315 San Diego, California 92123	N	Y	Do not agree with proposed changes. If the person is a professional or is regarded as a professional, there should be monitoring devices in place.	The changes will not decrease the level of supervision imposed by rule 7.1010. They are made necessary by a change in the definition of a private professional guardian. Under the existing rule, guardians of the person only were already exempt. The statutory

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Commentator	Position	Comment on behalf of group?	Comment	Response of Probate and Mental Health Advisory Committee
				changes do not alter this fact.
9. Ms. Sandra R. Riley Supervising Probate Attorney Superior Court of California, County of Los Angeles 111 North Hill Street, Dept. 11 Los Angeles, California 90012	A	N	Agree with proposed changes.	No response necessary.
10. Mr. Michael Roddy Executive Officer Superior Court of California, County of San Diego 200 West Broadway San Diego, California 92101	A	Y	Agree with proposed changes.	No response necessary.
11. Iris Stuart Court Operations Manager Superior Court of California County of Sonoma 600 Administration Drive, Room 107J Santa Rosa, California 95403	A	N	Agree with proposed changes.	No response necessary.
12. Superior Court of California County of Los Angeles [commentator not otherwise identified]	A	Y	Agree with proposed changes.	No response necessary.

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Commentator	Position	Comment on behalf of group?	Comment	Response of Probate and Mental Health Advisory Committee
111 North Hill Street Los Angeles, California 90012				